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**IN THE
COURT OF APPEALS OF INDIANA**

NANCY PREWITT and
MICHAEL PREWITT,

Appellants-Defendants,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 77A05-0611-CR-644

APPEAL FROM THE SULLIVAN CIRCUIT COURT
The Honorable P.J. Pierson, Judge
Cause No. 77C01-0201-MR-2

May 16, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellants-Defendants, Nancy Prewitt and Michael Prewitt (collectively, the Prewitts), appeal the trial court's grant of the State's Motion for Jury to View Scene.

We reverse and remand.

ISSUE

The Prewitts raise one issue on interlocutory appeal, which we restate as: Whether the trial court abused its discretion in granting the State's Motion for Jury to View Scene.

FACTS AND PROCEDURAL HISTORY

On January 15, 1997, Will Davies (Will) was shot to death in his home, which he shared with his wife, Nancy Prewitt (Nancy). On January 18, 2002, a grand jury indicted Nancy for Will's murder, and a jury trial was held later that year on December 5 and 6. Nancy was found guilty of murder; however in 2004, this court reversed her conviction, concluding that the State had withheld exculpatory and material evidence from Nancy prior to trial. *See Prewitt v. State*, 819 N.E.2d 393 (Ind. Ct. App. 2004), *trans. denied*.

On August 7, 2006, just before a second trial was to begin, the State filed a Motion for Jury to View Scene, requesting that the jury be allowed to view the scene of Will's shooting, where Nancy's present husband, Michael Prewitt (Michael), now resides. On August 22, 2006, Nancy filed an Objection to Jury View, which also expressed Michael's objections.¹ On September 13, 2006, the State filed its Response. No hearing was held on the Motion. On September 20, 2006, over Nancy's and Michael's objections, the trial

¹ Due to his interest in the issue at hand, *i.e.* whether the jury is allowed to enter his residence for viewing, Michael filed a Motion to Intervene, which the trial court granted on October 26, 2006.

court issued an order authorizing the jury and other necessary court personnel to enter the Prewitt residence for viewing. Alleging that the order was final as to him, Michael instituted a direct appeal; however, Nancy instituted an interlocutory appeal. On October 27, 2006, the trial court issued its Order Certifying Order for Immediate Interlocutory Appeal, and this court accepted jurisdiction on December 19, 2006. The same appellate cause number has been assigned to both Nancy's and Michael's appeals.

Accordingly, the Prewitts now appeal the trial court's order allowing the jury to view the crime scene. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

The Prewitts contend that the trial court's order allowing the jury and other necessary trial court personnel into their residence violates the Fourth and Fourteenth Amendments of the United States Constitution, Article I, Section 11 of the Indiana Constitution, and the Indiana Rules of Evidence. Thus, in essence, the Prewitts argue that Ind. Code § 35-37-25, which provides for the view of a place where any material fact occurred, is unconstitutional when that place is a private residence.

Initially, we note that a jury's view of a location is not evidence. *Jackson v. State*, 597 N.E.2d 950, 962 (Ind. 1992), *cert. denied*. Rather, it is simply intended to aid the jury's understanding of the evidence presented at trial. *Id.* Whether such a view will be allowed is left to the trial court's discretion. *Id.* A trial court abuses its discretion in allowing a jury to view a location if the viewing would not be materially helpful or if photographs or other evidence adequately present the situation. *Id.*

A jury's view of a location is authorized by statute under I.C. § 35-37-2-5, which provides in pertinent part:

Whenever:

(1) the court believes that it is proper; or

(2) a party to the case makes a motion;

for the jury to have a view of the place in which any material fact occurred, the court may order the jury to be conducted in a body, under the charge of an officer, to the place, which shall be shown to them by some person appointed by the court for that purpose. . . .

Here, the State has requested that the jury view the crime scene in order to demonstrate the proximity of the bathroom, where Will was found dead as a result of a single gunshot wound, to the bedroom where Nancy alleges she was passed out from drinking alcohol. Specifically, the State wishes to show that Nancy's story does not hold up because she was too close to the bathroom to not have at least heard the gunshot. However, our review of the record fails to show any explanation by the State as to how exactly the jury's understanding of the evidence will be enhanced by viewing the Prewitt residence. The record indicates that investigators took photographs and measurements inside the residence upon discovering Will's body. In addition, we point out that it has been a decade since Will's death, and the record reveals that in those ten years, changes have been made to the residence. For these reasons, we find it difficult for the State and the trial court to justify the expense and inconvenience associated with transporting the jury to view the scene. Therefore, in light of the lack of compelling arguments by the State that would lead us to believe that the jury's view of the residence would be

materially helpful in understanding the evidence, we conclude that the trial court abused its discretion in ordering the jury to view the crime scene. As we are able to dispose of this matter on nonconstitutional grounds, we will not address the Prewitts' constitutional arguments. See *General Motors Corp. v. Indianapolis Power & Light Co.*, 654 N.E.2d 752, 757 (Ind. Ct. App. 1995) (when a statute is challenged as unconstitutional, we first seek to dispose of the case on nonconstitutional grounds).

CONCLUSION

Based on the foregoing, we conclude that the trial court abused its discretion in granting the State's Motion for Jury to View Scene.

Reversed and remanded.

NAJAM, J., and BARNES, J., concur.